

Are there Exemptions and Limitations?

Note: If the recipient qualified for Medicaid fraudulently, the exemptions or limitations shall not apply

Recovery shall not be made from the estate if the estate representative can verify to the department's satisfaction that there is a:

- Surviving spouse
- Surviving child - means a living child under age twenty-one (21) or a child who is blind or disabled/

Recovery shall not be made from the estate on any resources protected from consideration during the eligibility determination process based on payment issued by a long-term care partnership insurance policy.

Undue Hardship

The department shall waive estate recovery to the extent the recovery would work an undue hardship.

- Undue hardship shall exist if an asset subject to recovery is the sole income-producing asset, for example a family farm or business, conveyed to the surviving recipient family member. A sole income-producing asset shall not include residential real property producing income through a lease or rental arrangement.
- The estate representative shall apply for an undue hardship exemption by:
 - Making a written request to the department within thirty (30) days of receipt of the notice provided in accordance with Section 7(3)(a) of this administrative regulation
 - Verifying to the department's satisfaction that the criteria exists for an undue hardship.
- The department shall issue a decision on an undue hardship exemption request within thirty (30) days of receipt of the request and supporting documentation.
- If the department denies the estate representative's request for an undue hardship exemption, the estate representative may request an appeal.

If an appeal is requested, an administrative hearing shall be conducted in accordance with 907 KAR [1:563](#), Section 4, and KRS Chapter [13B](#).

The department shall not conclude that an undue hardship exists if the deceased recipient created the hardship by resorting to estate planning methods under which the recipient illegally divested assets to avoid estate recovery.

- The department may waive recovery if it is not cost effective to recover from the estate.
- The department shall not consider it to be cost effective to recover from an estate if the total date-of-death value of the estate subject to recovery is:
 - Less than the administrative cost of recovering from the estate
 - \$10,000 gross value of the estate at the time of death or less.

The department may grant an exemption of the recovery provisions on a case-by-case basis to the extent of the anticipated cost of continuing education or health care needs of an estate heir.

The estate representative shall submit to the department a written request for an exemption and provide verification to the satisfaction of the department.

A deceased recipient's estate shall be subject to recovery of Medicaid Program expenditures to the extent it is adjudicated through a final administrative appeal process or court action that the recipient qualified for Medicaid fraudulently.